

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 22741 of 2006

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Dated 20th March 2007

Between:

The Rajahmundry Municipal Employees
Cooperative Credit Society Ltd., Rajahmundry,
East Godavari District, rep. by its Person-in-charge
G.Satyanarayana Murthy.

... Petitioner

and

The Deputy Registrar of Cooperative Societies,
Rjahmundry, East Godavari District & another

... Respondents

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ORDER:

The 2nd respondent functioned as a manager of the petitioner society. An enquiry was conducted, under Section 51 of the A.P.Cooperative Societies Act, 1964 (for short "the Act"), into the affairs of the society. In a report, dated 25.9.2002 filed therein, several irregularities were pointed out, some attributable to the 2nd respondent. Based on the same, surcharge proceedings, under Section 60 of the Act, were initiated by the 1st respondent. A surcharge order was passed on 26.6.2004, holding that the 2nd respondent is liable to pay an amount of Rs.85,300/- with interest at 24%. Liability was fixed against some other persons also.

The 2nd respondent filed O.A.No.181 of 2004 in the A.P.Cooperative Tribunal, at Visakhapatnam, under Section 76 of the Act. The Tribunal allowed the OA, and set aside the surcharge order passed against the 2nd respondent. Hence, this writ petition.

Smt.Bobba Vijayalakshmi, learned counsel for the petitioner, submits that the Tribunal committed an error, in totally setting aside the order of surcharge, against the 2nd respondent. She contends that if the Tribunal found any procedural irregularity in the surcharge order, it ought to have remanded the matter for fresh consideration, and there was no justification for virtually giving a clean chit to the 2nd respondent.

Sri K.Chidambaram, learned counsel for the 2nd respondent, on the other hand, submits that his client was not given an opportunity by the 1st, much less any records were made available, and the Tribunal took the same, into account, and had set aside the surcharge order.

In the recent past, this court has come across number of instances, where the A.P. Cooperative Tribunal, Visakhapatnam, had indiscriminately set aside the surcharge and other similar orders, without even considering the feasibility of remand. Sometimes procedural irregularities are pointed out, and the liability fixed against the employees, or elected representatives, running to several lakhs, were virtually wiped out, on hyper-technical grounds. There is every likelihood of the forum being misused and the interests of the Cooperative Institutions being defeated, on account of such an approach.

Section 60 of the Act, provides for initiation of proceedings, on the basis of the reports submitted, as a result of the inspection, or audit, under the provisions of the Act. The persons, sought to be proceeded against, are put on notice. It is always open to them, to raise such objections, as are available to them, in law. If any information is required to accept them, to effectively participate in the proceedings, they can make a request to the concerned authority. Wherever the proceedings suffer from any infirmity, the Tribunal can correct them, by giving necessary indication, or guidance. In the instant case, admittedly, the petitioner was put on notice, and he submitted his explanation. In the surcharge proceedings, the liability of the petitioner, as well as 10 others, was dealt with. It must not be forgotten that the proceedings under Section 60 of the Act, cannot be compared to those, in regular courts of law. In an appeal, or revision, against such proceedings, the only verification should be as to whether the affected persons were given an opportunity, and any material procedural irregularity has taken place. The Tribunal was of the view that the 2nd respondent was not given an opportunity of explaining his stand, before the 1st respondent. After referring to the judgment of this court in **CHALLA SANYASINAIDU v. DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES, SRIKAKULAM**^[1], the Tribunal held as under:

“In the present case on hand, the Deputy Registrar of Cooperative Societies/Respondent No.1 has not conducted an independent enquiry which is a condition precedent under Section 60 of the APCS Act and issued the impugned surcharge orders basing upon the Section 51 Enquiry Report. Hence, the impugned orders issued by the DR/Respondent No.1 are improper and illegal and are liable to be set aside.”

Once the Tribunal found that the surcharge order passed against the

2nd respondent is defective, for want of opportunity, the only course it ought to have considered was, to remand the matter, directing the 1st respondent to give adequate opportunity. However, it proceeded to discuss the matter, on merits, and had set aside the entire order. One can understand such a course of action, having been adopted by persons not conversant with principles of law, or not trained to adjudicate the cases. The very purpose of constituting the Tribunals, with an officer of District Judge as its head, is defeated. It is hoped that such instances do not recur.

The writ petition is accordingly allowed, and the order in O.A.No.181 of 2004 is set aside. The matter is remanded to the 1st respondent, for fresh consideration and disposal. The petitioner shall submit a representation, listing out the nature of information and particulars of documents, as are permissible in law, which he wants, within one week from the date of first hearing, after the remand. He shall not be entitled to canvass any fresh ground, thereafter. There shall be no order as to costs.

20th March 2007

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[\[1\]](#) 1998(1) ALT 482 (DB)